CASE AND COMMENT

OLD IRONSIDES POINTS THE WAY

REMINGTON ON BANKRUPTCY

COMPLETE IN TEN VOLUMES AND INDEX,
TOGETHER WITH 1941 SUPPLEMENTAL POCKET PARTS

PRICE $70.00 DELIVERED

The 1941 Supplemental Pocket Parts have just been issued.

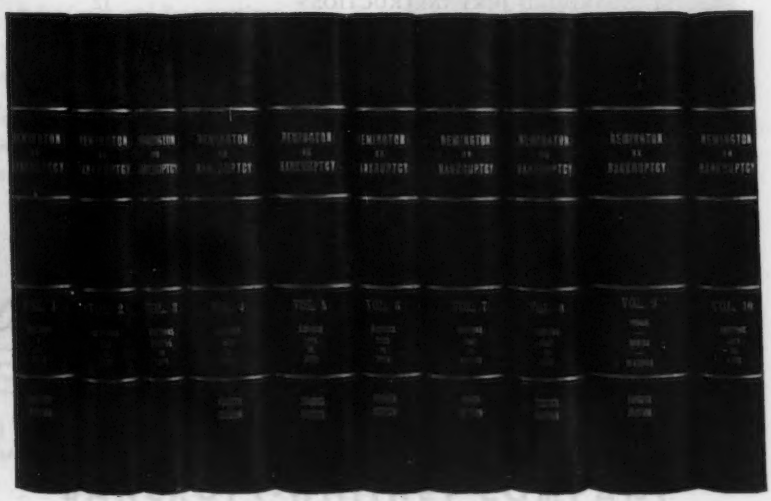
In August we issued two replacement volumes for the set; namely, 3 and 8. At the same time we brought out a new Index. This Index is exhaustive and unlocks all matter contained in the work.

Bankruptcy is now the leading Title contained in the Federal Digest. It occupies five full volumes. Remington is an indispensable guide to Bankruptcy Law. It is the only complete and comprehensive treatise on the market.

You will not make any mistake placing this set in your library. Annual Supplemental Parts keep it up to date.

THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY
ROCHESTER, NEW YORK

ORDER NOW AND BE PREPARED



THE LAWYERS' MAGAZINE

Vol. 47

CONTENTS

No. 3

Established 1894. Published by The Lawyers Co-operative Publishing Company. President, G. M. Wood; Vice Presidents, T. C. Briggs, E. A. Hale; Treasurer, A. J. Gosnell; Secretary, H. J. Henderson; Editor-in-Chief, G. H. Parmele. Office and Plant: Aqueduct Building, Rochester, N. Y.

How to Prepare and Try an Automobile Case

A TREATISE ON PROCEDURE IN THE CONDUCT OF AUTOMOBILE DAMAGE ACTIONS . . .

EVERY STEP IN THE ACTION

- ★ Institution of the Suit
- ★ Jurisdiction and Venue
- ★ Parties and Process
- ★ Pleadings
- ★ The Jury
- ★ Examination of Witnesses
- ★ Consideration of Insurance
- ★ Trial and Instructions
- ★ Verdicts
- ★ Damages
- ★ Evidence and Presumptions

WITH FORMS

Complete coverage of the adjective law based on an analysis of all the reported decisions.

Complete in one volume, $15.

Anderson's AN AUTOMOBILE ACCIDENT SUIT

Published by

BANCROFT-WHITNEY COMPANY

200 McALLISTER STREET, SAN FRANCISCO, CALIFORNIA

Wide World Photos

NEWEST JUSTICES DON ROBES

Associate Justices of the United States Supreme Court James F. Byrnes (left) and Robert H. Jackson, pictured for the first time in their official robes. Justice Byrnes took the oath of office on July 8, while Justice Jackson took his oath July 11.

A STORY OF "OLD IRONSIDES"

By J. L. SHERARD, Anderson, S. C.

A WILL is often a revelation of the finer traits of human nature. Many a person, especially those ripe in years and in wisdom, will turn aside from the formal business of making final disposition of their estates to add some fine touch of generosity or of sentiment that lifts the dry written instrument above the level of a mere legal document.

Recently, in going over the public records in a South Carolina county, I ran into an old will that contained an interesting reference to the frigate *Constitution*—"Old Ironsides"—which now rests in the Boston Navy Yard, a proud relic of one of the most thrilling episodes in American history.

The will was executed in 1841 by Samuel Warren, a southerner of the old regime, a resident of old Pendleton, one of the oldest settlements in upper Carolina. Warren lived through the stirring period following the Revolution on down through the War of 1812 and the stormy era of political upheaval centering around the rugged figure of Andrew Jackson. Warren belonged to the minority political opinion in the Palmetto State, for he was a follower and an admirer of Old Hickory at a time when the shadow of John C. Calhoun's powerful influence engulfed the State and put into eclipse every opposing idea of statecraft.

Calhoun's influence remained powerful in the affairs of the nation, in spite of Jackson's triumph, and continued so until his death less than a decade before the outbreak of the War between the States, but there were still many men of influence here and there who visioned, as Jackson did, a more cohesive union of the states and a great nation in the making if the federal government should continue to be the dominating power instead of the loosely confederated states.

After making disposition of his estate, Warren added this interesting codicil to his will:

"I give, devise and bequeath to my friend, Alfred Huger, of Charleston, my pair of crutches made with some of the live oak which was taken out of the Frigate Constitution when President Jackson ordered her thoroughly repaired; which crutches I put great value on, as I know of no friend who I think will take more care of and value for them, to his heirs and assigns, for I have always supported the Constitution to the best of my ability, and now that I am old, weak and infirm the Constitution supports me."

A fine and patriotic sentiment!

It may be assumed that the crutches which Warren bequeathed to his friend were made about the year 1833, for it was then, at the beginning of Jackson's second term, that the *Constitution* was overhauled and repaired and again put into service. It is an interesting coincidence that at the very time when Jackson had so vigorously nipped in the bud the nullification movement and had restored vitality to the Constitution of his country he turned his attention to the old frigate *Constitution* and likewise had her strengthened and restored to active duty in the service of the country.

This famous ship, forever enshrined in the hearts of all loyal Americans, was one of six war vessels ordered by Congress in 1794 on account of the Algerian piracies. She was launched in 1797. Her most famous engagement was with the British frigate *Guerrière*, in the War of 1812, about

a hundred miles east of Boston. The *Constitution's* victory was spectacular and complete, and so slight was the impression made on her hull of good Georgia oak by the British vessel that she afterward bore the proud sobriquet, Old Ironsides. Other laurels were added to her record during the same war, notably her splendid victory over the British frigate *Java* off the coast of Brazil.

The *Constitution* was reported as unseaworthy in 1830 and was condemned to be broken up. This order of an unsentimental naval board met with instant public opposition, and later, at the proper psychological moment, when sentiment had crystalized, Oliver Wendell Holmes published a spirited protest in the Boston *Advertiser* in a patriotic poem entitled "Old Ironsides."

"Oh, better that her shattered hulk
Should sink beneath the wave;
Her thunders shook the mighty deep,
And there should be her grave;
Nail to the mast her holy flag,
Set every threadbare sail,
And give her to the God of storms,—
The lightning and the gale!"

The entire nation thrilled to the poet's patriotic outburst, and such a public clamor arose that the order was revoked and the old ship saved from destruction. Under President Jackson's order she was again rebuilt and put into service in 1833. It was out of these cast-off timbers that Warren's crutches were made.

The live oak, which gave to the vessel's ribs the strength and resistance of iron, came from St. Simon's Island off the coast of Georgia.

In 1855, the *Constitution* was laid up at the Portsmouth Navy Yard and used at times as a training ship. In 1877, she was again rebuilt and the following year made her last trip across the Atlantic. She was roofed in at the Boston Navy Yard, in 1897, and was used as a barracks ship until 1925. She was later restored by popular subscription and in 1931 visited several ports on the Atlantic seaboard.

NOT QUALIFIED

A GRAND *jury was investigating the sale of whiskey in local option territory. A great number of witnesses had appeared before the jury, but an equal number of people who knew as little, it would be difficult to gather together. At length the sheriff ushered in a witness, who, judging by his reputation in the community, might be of some help in the matter at hand. Bewhiskered, dirty, ragged and ancient, he shuffled in and took his seat. The members of the jury plied him with pertinent questions, but with little success. "Where did you get the last whiskey you had?" he was asked. "Jim Jones give it to me," he answered. "Was it legal or bootleg?" was the next question. "I don't know," was the answer. He was then asked, "Don't you know good whiskey from bad?" He crossed his legs and looked blandly at his questioner and replied, "I never did taste no real bad whiskey."*

—GRAND JURY REPORTER,
Paducah, Ky.

TWO MULES MAKE NEW RULES

By JUDGE HOMER P. LUMKIN
(Condensed from Sept. 1941 Dicta)

This was written by Cecil M. Draper, member of the Denver, Colo. Bar and Editor-in-Chief of Dicta. Mr. Draper uses this pseudonym to create a character who from time to time makes homely observations on the workings of the law.

'S funny how when somethin' important happens, nobody seems to realize it's so important 'til a long time afterwards.

Take for instance Lincoln's Gettysburg speech, folks as heerd it didn't perk up their ears very much, an' some o' them newspaper fellas wrote it as bein' downright punk.

Well it's sorta that way with a case decided by our Supreme Court three-four years ago, viz, *Reed et alius v. Ordway State Bank.*[1] That case, 'cordin' to the court, involved "two certain mules"—an' right there anybody on his toes shoulda knowed the court was goin' to say somethin' important. Ain't no court gonna waste much time on two ornery mules, an' on top o' that, if the court was really gonna talk 'bout mules as such, the judge woulda given their names. When ever anybody as smart as our Supreme Court starts writin' decisions 'bout two nameless mules, you know they really ain't talkin' 'bout mules a-tall, but 'bout some idea like the Unknown Soldier an' such.

Well anyway here's what happened: A city fella livin' in Ordway—fella name o' Malone—had these two mules. Malone didn't have no place to keep the mules after the livery barn burnt down so after some dickerin' with one Boget, who ran a fair sized spread out o' town a piece, the latter agreed to keep an' feed the mules in return for their work, etc. After this had gone on 'bout a year, Malone sold or rather transferred 'em—the mules, I mean—by bill o' sale to the Ordway State Bank to pay up a debt which he'd owed the bank for quite a spell. The bank didn't have no work for the mules to do an' since grazin' weren't very good in an' 'round the bank, they just let the mules stay on out at Boget's.

Seems like Malone likewise owed the Reed brothers some money which he either weren't able to or didn't feel like payin' so the latter sued in J. P. an' 'tached the mules. Malone didn't much care 'bout the mules, 'cause he'd already transferred 'em to the bank some six months before, an' he didn't see much point in listenin' to the judge adjudge that he owed money to the Reed brothers, 'cause he already knowed that, so he jus' natur'ly didn't show up at the trial. The bank weren't there either so all the J. P. could do was turn the mules over to the Reed brothers. Which he did.

Two-three months later the bank found out what'd happened an' sued the Reeds in the district court to get back the mules.

Now if you didn't think 'bout it too much, you might think the bank had a open an' shut case, 'cause after all it is usually thought that a man can't sell what he don't own, an' since a 'tachment is 'bout like any other sale, 'cept that the judge does the callin', it seems like—well it jus' seems like that jasper Malone oughtn't to be 'lowed to pay two debts with them same mules. That's what the district judge thought, too. But if you think

[1] 102 Colo. 266, 78 P. (2d) 624 (1938).

you could get them Supreme Court judges to agree with the districk judge on reasons no better'n that, then it jus' goes to show you weren't never cut out to be much of a lawyer, 'cause if you was, you'd pay more 'tention to what them judges is thinkin' 'bout when they ain't on the bench.

Course now you maybe knowed at one time or 'nother what I'm 'bout to tell you, but I'll go over it all again jus' on the chance you maybe mighta forgot it.

For's long as I can remember, nearly everybody has belonged to one or t'other of two clubs or societies, both claimin' 'bout the same objects and purposes. One's brand's a picher of a elephant but seems like ain't many folks belongin' to that'n any more. Most folks is members o' the one whose brandin' iron is shaped like mules. Natur'ly all them latter folks is crazy 'bout mules so, that bein' so, we'll jus' call their club the Loyal Order o' Mulelovers, which o' course ain't their real name. Sons o' Wild Jack Asses ain't their real name neither, 'though I heerd one hombre called 'em that.

But to get back on the main trail, as I said before, all Mulelovers is crazy 'bout mules, but there's some other things 'bout which they ain't so crazy. One of 'em is bankers. They hates bankers 'bout as much as they likes mules. Bankers, they say, jus' ain't human. Now o' course you can see right away that turnin' two livin' emblems o' the Order over to a bunch o' bankers would send the cold shivers up an' down the backs o' all loyal Mulelovers. Why even to think o' such a thing is practic'ly a sacrilege. Trouble is everybody knows what a powerful lot o' folks is Mulelovers an' there ain't no sensible judge gonna rub their hair the wrong way if he can help it, leastwise not if he 'spects to get reelected. But more'n that, some folks say that anyway six out o' seven o' the Supreme Court judges themselves has claimed at one time or 'nother that they was members o' the Order!

Well now I've told you—you already know what the decision's gonna be. Or as them judges mighta said, "The decision's already arrived at. Now the only thing left is to figure out some legal means tellin' how we got there."

Course the court coulda said right off that mixin' mules an' bankers was agin public policy, which as near as I can figure means it's agin the morals an' interests o' society. Ain't no question but what it's agin the morals o' all Mulelovers. An' since it sometimes seems like Mulelovers an' society is practic'ly sinoneemus, maybe you got the answer right there. On top o' that, courts has been purty careful not to let folks know 'xactly what is an' what ain't public policy, so when you get all through, it's 'bout what the judge says 'tis. That way, nobody's got much comeback. Which maybe is good in some ways but which likewise is bad, too, 'cause everybody knows that what the judge says depends considerable on what his wife says or on what he's had for breakfast. So you can see that while this 'ere public policy might be good in a pinch jus' for short spurts, it ain't much of a horse for everyday ridin'. Anyway it's sorta like a ace in the hole an' you oughtn't to show it 'less you have to.

Sure looked for a while like they'd have to in this case an' then somebody that was plenty smart (musta been the judge, 'cause lawyers mostly ain't that smart) went 'way back to '61 an' found this old statute which said a sale o' mules like this was cheatin' an' no good, so far as Reed brothers was concerned, 'less the bank took possession or control o' the mules. Course nobody ain't ever had much control over mules, so that part o'

the statute was inconsequential an' unconstitutional, but the judge thought the bank coulda taken possession, even though there weren't no showin' that the bank had any place to keep the mules 'cept, o' course, in the bank. I've heerd it said that some bankers was stubborn as mules an' some folks even claim—metaforic'ly, o' course—that all bankers is jus' plain asses (which as everybody knows is mules' half-brothers), but personally I ain't seen no mules as such runnin' 'round banks for more'n fifty years.

You might think maybe the bank coulda set up a livery barn as a 'filiate, but that probably wouldn't o' done no good neither, 'cause lots o' folks think bank 'filiates is even worse'n banks. Like as not some of them Washington fellas woulda got out one o' them "cease an' desists" 'fore anybody coulda wrangled them mules anywhere near the barn.

Well it makes you kinda wonder jus' what the bank coulda done with them mules 'cept put 'em right back on Boget's spread where they was before, which was 'xactly what the court said they shouldn't o' done. But it probably didn't make much difference, 'cause too many folks hold as how bankers jus' ain't s'posed to own mules nohow.

Natur'ly the judge which wrote the court's opinion adjudged them two nameless mules as belongin' to the Reed brothers, an' so's there wouldn't be no slip up, told the districk judge to rule 'cordingly. There weren't no dissent. Course you can guess why all them alleged Mulelovers did as they did, but it jus' sets you wonderin' why that one judge who weren't a member o' the Order didn't get up an' make a stink. Maybe he figured the decision was fair to middlin' law, an' maybe it was. Maybe that's what he figured, but I don't think so. Me, I'm thinkin' that seein's how he had to 'sociate with them six other judges, he jus' figured it was healthier to try an' get along with 'em. Ain't much point in makin' buzz saws outa a half a dozen fellas even if they is Swedes or Baptists—or Mulelovers, 'specially not jus' on 'count o' two ornery mules.

Well anyway, it all goes to show how important some little things is, an' mostly folks don't realize it 'till a long time afterwards.

VOID IN REVERSE

A client recently requested suit on a note containing the following provision:

> "This note is for consideration of $1.50 a week or $2.00 as account No. 5151 check is over $25.00. If account No. 5151 is paid in full by the above mentioned amounts, this note will be considered void. If the account is not paid as described above, this note will automatically become void and payable at once."

Contributor: LONDON MIDDLETON,
Peoria, Ill.

AN AMERICAN VISITS THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

By CHARLES A. VILAS, Washington, D. C.

If there is one point upon which the English Courts of Appeal differ from the busy courts of last resort in this country, it is in the time taken and the thoroughness given to the consideration of each case. Where the rules of the Supreme Court of the United States limit oral argument to the extent of an hour on a side in ordinary cases, the House of Lords or the Privy Council will hear counsel until both sides have been completely presented, to the extent of even ten or more days.

The distinction between these two British courts of last resort is not always clearly understood in this country: appeals from decisions rendered in the Realm of Great Britain are determined by the Lord Justices constituting the Judicial Committee of the House of Lords; appeals from decisions of courts in the Colonies or Dominions, when allowed, are taken directly to the King, who refers them to the Judicial Committee of his Privy Council for advice. So the judgment of the latter body is always given thus: "We therefore respectfully advise His Majesty that the appeal should be allowed," or "dismissed" as the case may be.

It was this writer's privilege a few years ago to participate, as an interested observer, in the argument of an appeal from the Supreme Court of Ontario, and it was a colorful experience and one long to be remembered. On a cold dark morning in December we turned from Whitehall into historic old Downing Street and entered Number Two where we found our way upstairs into the dingy anteroom, filled with barristers from every quarter of the British Empire. Stalwart Australians and swarthy Hindus mingled with the cream of the London Bar. All about stood large oval tin boxes bearing the names of their owners. These later proved to contain wigs freshly dressed and curled for the occasion. Attendants assisted these august personages to don their silken robes and to adjust their wigs to the proper angle. In due course law clerks came in with green bags filled with "the papers in the case." The Council room itself was closed and no one was allowed to enter it until, on the stroke of ten-thirty, an attendant circulated about the halls calling:—"Counsel Please," when we all filed into the large square room where, seated at a crescent-shaped table near one end, waited the five Lord Justices assigned to hear our case. It was notable that they were not gowned nor wigged. In front of them, barred off by a rail, were the wooden benches provided for the barristers, their assisting solicitors and clerks. Along the wall were chairs for such visitors as ventured in, but those were few.

The room is three stories high and approximately fifty feet square. At each end are two huge fireplaces in which burn blazing coal fires; these supply substantially all the heat for the room, as the four modest hot water radiators at the sides, comprising the English idea of "central heating," furnish but a tepid suggestion of warmth when touched. To the American used to his winter comforts, sitting for five hours in this wintry atmosphere made the temptation great to stamp the feet and swing the arms. Even their Lordships were not altogether immune to the climate, and it

was not unusual to see one of them give an order to an attendant who would promptly bring out a large steamer rug from a private cupboard and wrap up his Lordship's legs and feet.

All this, however, was soon forgotten in listening to the smooth and masterly presentation of the case by leading counsel for the appellant. Knowing that his time was unlimited (and perhaps not unmindful that every additional day meant a "refresher"), he first carefully laid before their Lordships his plan of presentation; after which he thoroughly developed the facts of the case as disclosed by the record sent up from Canada. His points of law were then unfolded and expounded at length, to be followed by the consideration of the authorities supporting his "Submissions." And when it came to the consideration of an authority, it was not the mere citing of it with a short quotation of some relevant part; a copy of the case cited was in the hands not only of all counsel, but of each justice as well, and, beginning with the headnote and continuing right down to the final judgment, that case was dissected, analyzed and discussed until there was nothing possible left to be said about it, and its bearing upon the case under consideration could not be left in doubt. Indeed the entire affair was much like a joint debate, for the justices took part in the argument with counsel and also disputed more or less acrimoniously among themselves. It was not many hours before one could tell with some certainty that at least two justices were against the appeal and two others probably for it with one in doubt.

Approaching noontime of each day a waiter would appear among the barristers and others at the bar, and whisperingly inquire of each his wishes in regard to lunch, for which he provided a menu. This meal was served in an adjoining room at one o'clock, only a half-hour recess being taken for that purpose. Promptly at four the day's work was over to be resumed the following morning.

This went on for five days during which counsel for both sides were heard in reply and in rebuttal, and when the last word had been said one felt that for once at least his case had had a complete and thorough hearing. It is not unusual for judgment to be pronounced immediately at the conclusion of argument, but such was not the case on this occasion. Their Lordships obviously were not in agreement, and consultation was necessary, for in Privy Council judgment dissents are never recorded. And so their Lordships took their judgment under advisement until the following February, and the grapevine has it that they were divided three to two, so close were the legal questions involved.

No wonder that, with such a presentation, motions for rehearing are unheard of and indeed wholly unknown in British practice. It would be a rash barrister indeed who ventured to suggest that the august court had overlooked some important point in its consideration of the case.

WHEN my eyes shall be turned to behold, for the last time, the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on states dissevered, discordant, belligerent! on a land rent with civil fueds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance rather behold the gorgeous ensign of the Republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original luster, not a stripe erased nor polluted, not a single star obscured, . . .

—DANIEL WEBSTER IN U. S. SENATE.

STANDARDIZED JURY INSTRUCTIONS

By OSCAR S. CAPLAN

(Judge of the Municipal Court, Author of "Pertinent Points on Probate Practice," Rules of the Municipal Court of Chicago, Municipal Court Manual, Standardized Jury Instructions in Illinois, Pretrial Practice in the Municipal Court of Chicago and other volumes.)

EVERY lawyer is acquainted with the extent to which litigation today is characterized by delay, expense, uncertainty and appeal in so many courts. These conditions have given rise to dissatisfied litigants and an aroused taxpaying public. To neglect this dissatisfaction or fail to attempt the solution of such important difficulties portends not only ruin for the legal profession, but it constitutes a threat to our democracy, the foundation of which is the true administration of justice.

Law is conservative. It applies the experience of the past to the problems of the present. No part of it is more conservative, more resistant to change, than the procedure in jury cases. Yet, it is important that the machinery of justice be up to date, as it is that the mechanics of industry make use of the latest inventions. Progressive lawyers all through the century have realized this, and there never has been a time since Chitty when someone was not agitating for further modernization of legal procedure. In fact, because the procedure of the past, particularly that of right of trial by jury, has held its citadel so securely, it has been assaulted more continuously and vigorously than most other anachronisms of the law.

Much of the fault of bad jury verdicts has been because judges have been unable to make "crystal clear" to the jury the proper application of simply stated rules to the particular facts. It should be remembered that most jurors are not "bookish" men nor greatly experienced in absorbing the meaning of complicated language, especially when expressed in unfamiliar wording, typical of most jury instructions.

Many trial lawyers feel that verdicts of juries are unpredictable; that one never knows what reaction a jury will have to a certain set of facts; that juries sometimes go "wild;" that they attach importance to minor or insignificant items of evidence and thereby lose sight of the real issues; that they are misled by long phrases or cumbersome sentences contained in instructions, and that in some cases, they give damages where none are warranted, or vice versa, or that where cross-issues are involved, they return improper verdicts.

Since the jury is usually the sole judge of the facts, their verdicts ordinarily "stand up" in the Appellate and Supreme Courts of Illinois, at least where no gross errors of law or evidence have been committed at the trial. Many lawyers feel now that "anything can happen" when a case is submitted to a jury, and therefore suggest to their clients that a settlement is advisable, when, as a matter of law and fact, there is no merit to the claim. This has given rise to the term "nuisance value" which has become a stock expression among defense attorneys. Thousands of dollars are paid annually in settlement of questionable lawsuits, because lawyers and litigants fear the "bad" judgment of jurors.

It has ably been said by U. S. District Judge W. Calvin Chestnut, of Baltimore, that one of the remedies in the "guess-verdict" system is to make it clear to the jury in

everyday language—simple and clear, giving the rule to be applied, without indicating that certain facts justify a finding for the defendant or the plaintiff. In many instances a multiple number of instructions terminating with "You will then find for the Defendant," and only a few ending "You will find for the Plaintiff" accentuates the fact on the minds of the jury that either the Court is favoring the defendant, or that "most" of the law is in favor of the contention of the defense.

There has always been a great diversity of opinion as to whether general abstract instructions or definitely concrete directions will aid in the rendition of a correct verdict. It seems that the failure to make a jury understand the res gestae and the law involved is equally absent under both sets of circumstances.

History

The first set of standardized instructions has been introduced in the Superior Court of Los Angeles County, and later adopted in many other counties in California. For several years under the direction of Superior Judge William J. Palmer, this new system has been proclaimed as a success by the bench and bar. It is true that they were mainly utilized in negligence cases, but this category of claims constituted more than seventy-five per cent of the calendar in those courts. In the last year, courts in other states have adopted this system and with singular success.

Use in the Municipal Court

The system of standardized jury instructions to be used for the first time in Illinois is to be enforced shortly in the Municipal Court of the City of Chicago, the largest court of its kind in the world. Following a definite system of modernization of procedure, it had installed a year ago the pretrial system, which saved over $50,000 last year, and the success of which was partly responsible for the enactment of the "pretrial act" in the Civil Practice Act of Illinois, so that it could be used legally and fully by every court of record in Illinois.

The standard forms of instructions in the Municipal Court cover all branches of substantive law, both tort and contract, replevin and trial of right of property, garnishment and attachment, as well as tax and quasi-criminal cases. In all, there are about one hundred and ten instructions, in simple and concise language. An inexhaustible attempt has been made to avoid legal phraseology and technical misnomers. On the contrary, these judicial directions are given in the everyday language, explaining first the principle of law, the obligations and duties of both or all parties, and in a few instances suggest alternative verdicts. It has been found that the culminating sentence "You will find the defendant guilty" or the "plaintiff not guilty" should be avoided as much as possible, because of its tendency to create an unfair impression in the minds of individual jurors.

These instructions are now being examined by the Chicago Bar Association, and upon their approval, they will be distributed to the lawyers before February 1st, 1942. A rule of court is being prepared to meet this new condition, making it discretionary with the presiding judge as to what instructions may be used, after their recommendation by parties to the suit. Upon motion of counsel, it is discretionary with the trial judge to either substitute or give a "non-standardized" instruction in extraordinary cases, the test being, the production of substantial justice to all litigants.

BENEFITS

First of all, it is believed that there will be a greater percentage of proper, just and fair verdicts under this simplified system. It is estimated that much time will be saved in the preparation of these instructions by the counsel and their examination by the trial judge. Haphazard instructions, improperly drawn, loosely connected and in a "misunderstanding" fashion appear daily in trials before the court, most likely, because the sum involved and the fees charged, cause one to be somewhat lax in the proper preparation. Under these approved stock instructions, not only will less time be wasted, but the court and lawyer will feel that they are not prejudiced or taken advantage of by some overly zealous advocate who sometimes inserts something too favorable to his client in the next to the last line or thereabouts, about sixty seconds before the instruction is presented to the judge.

The greatest feature of all, I believe, is that it will minimize to the least the number of appeals. Our experience teaches us that a great majority of appeals are based on the rendition of improper instructions. All the stock or standardized instructions to be used by the Municipal Court has been passed on favorably either by the Appellate or Supreme Court in some decision involving a similar situation.

As far as juries are concerned, it will help to take away the "mystifying" feeling that the court is "giving" them some legal fiction, merely as a perfunctory duty and not legal suggestions for their guidance and advice. Surely, there can be no question then, that by inference of verbiage or emphasis of certain sentences, the judge is attempting to favor one of the litigants. The instructions will be recommended to the judge by their respective numbers allocated to them alphabetically, and the court will be compelled to give them, if he feels that they are pertinent to the facts at issue.

The shortening of the instructions, as well as their simplification and clarification, will tend to assist the jurors instead of confusing them, as is often the case. Short instructions, given simply and plainly, will cause less slurring, mumbling and swallowing of words.

In my experience, on many occasions, the lawyer, in interrogating the jurors on preliminary examination, feels that he ought to explain the meaning of "chattel mortgage," "fixture," "warranty" or any legal "nomer" which may be the gist of the action. Surely, every lawyer knows what is meant by those terms, but when he attempts to explain their meaning to a jury, it is both incorrect and confusing. In these stock instructions, care has been given to define these legal terms clearly, so that the jury will at first hand, know the rudiments and fundamentals which are involved. This will give them a preliminary understanding, from which point they can proceed with understanding and confidence to arrive at a legal and proper verdict.

This idea may be criticized as an effort to regiment the profession. The tender of long, verbose and complicated instructions, as basis for future appeals, should the verdict be against him, is the kind of "hide and seek" law, which should not be encouraged. Any new procedure which will tend to save time and lessen the miscarriage of justice is not a regimentation of lawyers but an improvement over "model T" practice.

The topics treated are all branches of contractual obligations, functions of the court and jury, weight to be given conflicting evidence, false testimony, preponderance and burden of proof, definitions of accident and neg-

ligence, proximate cause, concurrent causes, damages, contributory negligence, statutory violations, res ipsa loquitur, common carriers, wilful and wanton misconduct, invitees, licensees, trespassers, attractive nuisances, dramshops, malpractice, negotiable instruments, bailments, corporations, agency and other prominent subjects which are most frequently tried in the people's court of Chicago. In this court, we have more cases of forcible entry and detainer, replevin, right of trial of property and garnishment, than practically all other courts in the entire state. To these divisions of law, great stress has been given in the formulation and adoption of basic instructions, which would unquestionably give both sides an impartial, fair and quick hearing, without the necessity of taking an appeal in a suit involving amounts from ten ($10) to two hundred ($200) dollars.

Steps are being taken to issue supplemental instructions semi-annually, so that they may be kept up to date and in compliance with new decisions.

In his report to the Journal of the American Judicature Society (23:5.-177), Judge Palmer speaks wisely when he states "that it is apparent that this undertaking would be forced to weave its way through a thicket of human nature, beginning with the negative condition of lack of imagination and extending through complacency, inertia, conflict of interests, and possibly into the thornier coppice of obstinacy, egotism, and jealousy."

These words depict without much exaggeration the path that all legal reform must tread. However, this is not too difficult a path for a good idea, as is evidenced by the security with which standardized jury instructions are now entrenched in California.

Small causes may well present quite as difficult problems as those involving large sums of money or valuable property. What is unprofitable for the lawyer, should not be made less profitable by first century procedure.

In a world of war, of shifting concepts of government, of legal reforms, it must be conceivable that our system of justice must be affected. We cannot further tolerate known abuses. We must eradicate known defects. We must adopt known methods of improvement, and we must make them work. The procedure of modern law can stand for one more improvement. That improvement is the use of standardized jury instructions. It will meet the challenge for quicker, better, impartial and more proper jury verdicts in our courts of record.

INFIDELITY

A few years ago a lady consulted her lawyer relative to a divorce. After talking to her, he thought matters might be simplified by talking to the husband. He called him in and told him of the impending action.

The husband demanded, "But what grounds does she have for a divorce?"

The lawyer answered, "Oh, I don't think she'd have any trouble proving infidelity."

The husband bridled right up, "Huh! That ain't so. She can't get a divorce on that ground. She knows I believe in God."

The lawyer got her the divorce just the same.

—CONTRIBUTED.

BRANDEIS — PROPHET OF INDUSTRIAL ERA

By GEORGE R. FARNUM[1]

(Reprinted from Boston Traveler, October 11, 1941)

"WHEN a great tree falls," the late Justice Holmes once observed, "we are surprised to see how meager the landscape seems without it. So when a great man dies. We may not have been intimate with him; it is enough that he was within our view; when he is gone, life seems thinner and less interesting." These words might have been spoken of Louis D. Brandeis, though several years have passed since he doffed for the last time the robes that he had worn so long and with such distinction as a justice of the United States Supreme Court, and withdrew to the sedulously guarded seclusion of private life. He was the last of the great liberal triumverate—Holmes, Cardozo and Brandeis—which has now passed from the contemporary scene, though the influence of their work will live for years to come.

His Last Work

No man can more reasonably be acclaimed than Brandeis, the prophet of our industrial era. His last years at the bar and those on the bench were consecrated with singular devotion to the study of those terrible problems of social inequality and economic dependence which are the curse of our times. He discerned the tragic extent to which people are victims of the fatuous notion that the value of a civilization depends upon the ingenuity of its machines and the ominous heresy that the prosperity of a nation is reflected in statistics of its wealth that fail to deal with the character of its distributions. He proclaimed that "Our American ideals cannot be attained unless an end is put to the misery due to poverty," and that the chronic question of unemployment is "perhaps the gravest and most difficult problem of modern industry."

He saw there could be no real happiness in a land where a large part of the population was harassed by the specter of destitution and no persisting vitality in the character of a people deprived of the vitamins of self-respect and self-reliance. He was convinced that the battle for economic liberty is as important for the future of mankind as that for the preservation at home and the regaining abroad of political freedom.

What haunting memories of my Washington days the news of his passing evokes! How clearly I see him today, as he then sat on the great court. As I write, there comes vividly before me his fine sensitive face which bore the impress of a life devoted to the cultivation of mind and the enrichment of spirit, purified by the austerities of years of toil and study, sweetened by an understanding sympathy with all sorts and conditions of men and ennobled by a love of home and a feeling of reverence for the majesty of the universe.

Follows Inclinations

At the beginning of the Monday sessions, the visitor to the Supreme Court may witness an old and impressive ceremony—the pronouncement of the decisions reached during the previous week. In delivering the opinions no inflexible formula is adopted. Each justice follows his own inclinations. It was a rare privilege for those in attendance when

[1] Boston Lawyer, Former Assistant Attorney-General of the United States.

Justice Brandeis spoke. However long and intricate the case, he never read from manuscript or referred to notes, as all or most of the other justices did. Leaning forward in seeming intimacy with his audience, in that voice marked for its fine modulation and clear enunciation, he explained the nature of the proceedings, analyzed the questions involved, announced the decision reached—or his own personal views if dissenting—and ended with an enlightening exposition of the reasons upon which the conclusion was founded. Thus he usually succeeded in converting an often technical and dry case into a moving bit of human drama.

I can say with greatest sincerity that no judge before whom I have ever appeared has rendered my task as an advocate easier and more agreeable of accomplishment. To the attorney addressing the court—whether he was among the most distinguished of his profession or some obscure practitioner from a remote community making his first appearance—Justice Brandeis gave his undivided attention and to what he had to say the most patient and kindly consideration. His entire attitude bespoke a friendly interest and radiated encouragement. No lawyer, thus inspired, could fail to rise to the heights of his capacity.

Gallant Gentleman

Justice Brandeis was at all times a true and gallant gentleman. A lawyer arguing before the Supreme Court must be prepared for searching interrogation by the justices, who are by no means amateurs in the art. It is related that a young woman making her debut had scarcely begun to address the court when one of the Justices pounced on her with questions that completely unnerved her. When he had finished, Justice Brandeis took up the questioning somewhat after the following manner, "Now, Miss Blank, when Justice Blank asked you this question (which he repeated) I understand that your answer in substance was this," lucidly stating her proposition. "And to his query concerning this aspect of your case (to which he referred) if I am right, this is your position," summarizing the point in his clear and convincing way. Proceeding thus the justice covered the entire ground of the interrogation and rehabilitated the shattered argument. The result was that the young woman's composure was regained and her confidence restored, and she proceeded to develop her argument without further difficulty.

Though he is reputed to have amassed a sizable fortune—in part from his earnings as a corporation lawyer in the earlier days of his practice, and in the years before the great ideal of industrial reform and economic liberty possessed his soul,—his way of life always severely conformed to the standard of "simple living," which as he declared in his will, "we have practiced from conviction." The disposition of the bulk of his property testifies eloquently to his altruism, as well as to his more recent interest in the Zionist movement.

I cannot conclude these few observations without paying a high tribute to the perspicacity of Woodrow Wilson, who discerned Brandeis' great capacity for judicial service, and to the persistency and courage he displayed in standing steadfastly by his choice in the long and bitter battle waged over confirmation.

HITCH RACKS FOREVER

Contributed by L. R. Stewart, Murphysboro, Ill.

May 5th, 1893
State of Illinois, Jackson Co.

THIS indenture made and entered into this Day by the trustees of Oak Ridge freewill Baptist Church Party of the first Part agrees to and with John Levan Party of the Second Part to make and put up good Hitch Racks.

The condition of the above obligation is such that Levan Party of the Second Part did on the 25th day of March 1893 sell to the trustees of Oak Ridge Freewill Baptist Church Party of the first part ninty three rods and one half of land on said land now is built the said Freewill Baptist Church it is expressly understood and agreed to that the trustees and their successors in office is to keep said hitch racks up in good repair for ever and if the said hitch racks shall at any time become toren down or get in bad shape it then shall be the duty of John Levan Party of the Second Part to notify said trustees of said Hitch Racks being toren down or in bad repear after giving thim fifteen days notice and at the expiration of fifteen days if the said hitch racks is not put up in good shape said Trustees, Party of the first part and their successors in office shall be helt firmly bound unto John Levan Party of the Second Part and his heirs for ever for all damages dun to him caused by said Hitch Racks not being kept in good repear. Said hitch racks to be put up when ordered by John Levan, Party of the second part.

EARLY KANSAS WILL

March the 22 1887
Toronto Woodson co Kansas

A WILL from I Bosley to Jery Bosley i make this for his name he was Born in the house and has never ben away if he stays and is a good boy with mee takes car of mee tell after i am laid away he chall have all of my properte i one horses or cattle or real estate witch will hold all i am worth when i am dun with this world i ask him to put up a tume stone and keep my Grave heaped up full and big if i die Before he is caple of manedg for himself he chall let Reson lucus advise him what to do fr the Best no Body els shall hav eny thing to say about it But said lucus and the said Jery Bosley i ask the Judg of enny cort or county to giv the said Jery Bosley good title to all i hav after Deth I Bosley

i hav givin all the rest of my ares from five Dolars to five hundred so tha shant hav eny more what is left i will to Jery Bosley Reson lucus has none mee I Bosley for thirty years and will say i am capbul of doing my one Bisness yet

now said Jery Bosley is to not let enny of his rellitives in the house nor lend them enny thing that ever Belong to me I Bosley horses nor cattle he shant sell to enny kin folks Because tha will swindle him if tha can i dont meen tha shall hav a chanse i dont oe them nothing nor tha shant hav nothing so this will shall stand good and in full forse to Jery Bosley

from I Bosley to Jery Bosley his gran son I Bosley my will

Witness

REASON LUCUS
his
GEORGE X CASTOW
mark

(Written on side)

i rite this will my self
I Bosley

Subscribed to before me this 28th day of April A. D. 1887

CHAS. W. POLLARD, Justice of the Peace for Toronto Township, Woodson County, State of Kansas

JEFFERSON ON WASHINGTON

UNLIKE Lincoln, Washington had no John Hay to record his life and character for posterity. The man who knew him best was friend and critic, Thomas Jefferson, who wrote the following to Doctor Walter Jones, a contemporary political writer.

Monticello, January 2, 1814.

Dear Sir.—Your favor of November the 25th reached this place December the 21st, having been near a month on the way. How this could happen I know not, as we have two mails a week both from Fredericksburg and Richmond. It found me just returned from a long journey and absence, during which so much business had accumulated, commanding the first attentions, that another week has been added to the delay. . . . I have read with great pleasure the paper you enclosed me . . . which I now return . . .

You say that in taking General Washington on your shoulders . . . you encounter a perilous topic. I do not think so. . . . I think I knew General Washington intimately and thoroughly: and were I called on to delineate his character, it should be in terms like these.

His mind was great and powerful, without being of the very first order; his penetration strong, though not so acute as that of a Newton, Bacon, or Locke; and as far as he saw, no judgment was ever sounder. . . . He was incapable of fear, meeting personal dangers with the calmest unconcern. . . . His temper was naturally high toned; but reflection and resolution had obtained a firm and habitual ascendency over it. If ever, however, it broke its bonds, he was most tremendous in his wrath. . . . His heart was not warm in its affections; but he exactly calculated every man's value, and gave him a solid esteem proportioned to it. His person, you know, was fine, his stature exactly what one would wish, his deportment easy, erect and noble: the best horseman of his age, and the most graceful figure that could be seen on horseback. Although in the circle of his friends, where he might be unreserved with safety, he took a free share in conversation . . . in public. when called on for a sudden opinion, he was unready, short and embarrassed. Yet he wrote readily, rather diffusely, in an easy and correct style. . . . On the whole, his character was, in its mass, perfect, in nothing bad, in few points indifferent; and it may truly be said, that never did nature and fortune combine more perfectly to make a man great, and to place him in the same constellation with whatever worthies have merited from man an everlasting remembrance. . . .

How, then, can it be perilous for you to take such a man on your shoulders? I am satisfied the great body of republicans think of him as I do. We were, indeed, dissatisfied with him on his ratification of the British treaty. But this was short lived. We knew his honesty, the wiles with which he was encompassed, and that age had already begun to relax the firmness of his purposes: and I am convinced he is more deeply seated in the love and gratitude of the republicans, than in the Pharisaical homage of the federal monarchists. For he was no monarchist from preference of his judgment. The soundness of that gave him correct views of the rights of man. and his severe justice devoted him to them. He has often declared

to me that he considered our new constitution as an experiment on the practicability of republican government, and with what dose of liberty man could be trusted for his own good; that he was determined the experiment should have a fair trial, and would lose the last drop of his blood in support of it. . . .

These are my opinions of General Washington, which I would vouch at the judgment seat of God, having been formed on an acquaintance of thirty years. . . . I felt on his death, with my countrymen, that "verily a great man hath fallen this day in Israel."

More time and recollection would enable me to add many other traits of his character; but why add them to you who knew him well? And I cannot justify to myself a longer detention of your paper.

—THOMAS JEFFERSON.

WOULD HOCK GOLF STICKS TO PAY TAX

By Eugene O'Dunne

(Judge of the Supreme Bench of Baltimore)

YES, the judicial salary is, as you say, $10,000 and the new tax on that will be over $1,300 Federal and some $200 for State income tax, or about $1,500. I have one minor son about ready for Hopkins. Being just over eighteen, no exemption is allowed for him as a dependent. However dependent he is in fact, he is not so in law.

I have made no provision to meet the tax. Having raised six children and put two sons through Hopkins and Harvard, I have saved nothing, but I have the rich heritage of a fine family, and I begrudge them nothing. My fifteen-year term expires in November next. How the tax will be met I do not know. All I know is that it *Must Be Met.*

It is necessary to the national defense. When the tax reaches 50%, which it will, it must also be met, and met ungrudgingly, cheerfully, with a smile of national pride, an anthem of democracy. It is a citizen's contribution to his country's cause.

I am still young enough in spirit, and in fact, to serve in other capacity. I occasionally drop a bomb, but I could also do it from a plane. The Blue Ridge traffic cop overhauled me last week-end and said ticket was not for *Speeding* but for flying *Too Low.*

There must be no evasion of income taxes in the national defense, but a cheerful contribution.

It may become necessary to seek a cheaper apartment, to eliminate all so-called "luxuries," to give the car to the finance company and walk instead of riding, to wear even older clothes than those of the present, to get a hair cut once a term, instead of once a week, and kiss the manicurist goodbye, cut out drinking and smoking, resign from all clubs, hock the golf sticks (with a fingerprint at the pawnshop), eschew the opera and the movies, sell my library and practice judicial law by ear, cancel subscriptions to the Sunday newspapers and substitute the Book of Job, and rely on the evening last edition, and perhaps get an occasional tip from a cop or a taxi driver on a horse at Pimlico, and charge it up as "charity" to the Agricultural Incorporated Association for the better breeding of Army horses.

CIRCUS ANIMALS UNDER THE HAMMER

A CIRCUS, owing to wartime harassments, is forced to dispose of a mother lion and three cubs. . . . A chaplain wants to buy a young lion —but not "too young." . . . A purchaser must be found for a gaudy and talkative parrot. Such are some of the abnormal problems of a nation at war.

It is difficult for a political democ-

racy to be ready at all times for war; as well as very upsetting and expensive. When a nation which has been both hoping and planning for peace suddenly is plunged into war, myriad problems arise, many of them amusing as well as important. This importance, however, is relative.

Amongst the problems that have had to be faced are those which involve the animals at the London Zoo and Whipsnade. In the past two years the difficulties there have attracted widespread interest, and most of the literate and free world knows that the Zoo denizens are rationed and that rare poisonous snakes have been destroyed.

WEIGH LESS, EAT LESS, COST MORE

Many animals went at bargain prices during the course of an auction sale of the world-famed Sanger Circus.

The elephant Annie, aged 50, weighing four tons, brought $210 from a Manchester zoo, where she will give rides to children. Another elephant, Alice, weighing 2½ tons—and therefore eating much less—brought nearly $400; she went to another circus. As sales were completed Annie and Alice trumpeted and plunged in resentment at their separation.

Farmers bought 18 performing cream ponies for light field work. When brought out on exhibition the ponies thought it was just another circus performance and made the customary bow to the spectators.

There was unusually animated bidding for the gaudiest parrot in the circus, which eventually went to a bird fancier for $140. The man who obtained the parrot asked just before the completion of the auction whether the bird could talk. The auctioneer replied:

"You bet he can. He's been bidding against you for twenty minutes!"

There was one unusually reverend individual in the auction crowd: Chaplain George Key of the King's Own Royals. This British regiment carries a lion passant as a cap badge and is the only regiment in the army list permitted to have a live lion as a mascot. The mascot's post is at present unoccupied. The K.O.R. officers, desirous of filling the vacancy, subscribed $240 and deputized the chaplain to obtain a lion at a bargain price. Key ascertained that the three cubs offered for sale by the Sangers were too young for separation from their mother and, as he was empowered to take only one on regimental strength, this quartette went to another buyer for $100. Key could not let his associates be disappointed so he appealed to a circus owner attending the auction and this man came to the rescue. He offered, gratis, a three-months-old cub from his menagerie, when it was old enough to leave the parent.

Footnote: the sale attracted 3,000 persons, including an Aberdeen Scot clad in a Tartan shirt who bought nothing.

—Bulletins from Britain—

A SUBSTANTIALLY MERRY CHRISTMAS

To All Whom it may Concern:

BE it known that, we the members and associates of the Patent Institute of Canada, with headquarters in the City of Ottawa, County of Carleton, Province of Ontario, Dominion of Canada—being inspired with a certain old and good intention entitled, "IMPROVEMENTS IN GREETINGS" hereby declare that the following is a substantially full, clear and exact description of the same:

This intention relates to greetings, wishes, felicitations, salutations and the like, and more particularly to those which convey thoughts of festivity, conviviality, good fellowship,

esprit de corps, joie de vivre and geniidichkeit.

The object of the present intention is to produce a greeting of increased warmth, roughly several degrees Fahrenheit above that of greetings hitherto proposed.

The intention consists in the thoughts, ideas, fancies and whimseys hereinafter described and more particularly pointed out in the appended claims.

Referring now to the unaccompanying drawings, which illustrate a convenient embodiment of the intention, the recipient **a** is shown reclining in an armchair, bench, couch, sofa, bed or other preferred seat or support **b**, and replete with nourishment and goodwill. He and/or she is and/or are located adjacent a source of heat **c**, which may take the form of a grate full of blazing yuletide logs, an electric, gas or steam radiator, or a stove, range, furnace or hot water bottle according to circumstances.

Beside the recipient **a** is positioned a table or analogous supporting device **d**, bearing any desirable object **e** for example, bottles and glasses, cigars, ash trays, confectionery, or knitting according to taste. A coniferous tree of considerable dimensions is indicated at **f**, and from the limbs thereof are suspended a multiplicity of ornamental or decorative articles **g** which afford pleasure to the children, bairns, infants or babies, if any, **h**, who play, romp, frolic, gambol and frisk in the vicinity.

Without, the mercury in the thermometer or other temperature measuring instrument **i** is frozen and the wind blows the snow flakes **j** violently against the window pane **k**, thereby emphasizing the conviviality and esprit de corps within.

It will be understood that the foregoing scene is depicted merely by way of suggestion or example and that any other preferred conditions or activities within the scope of the appended claims are included in the spirit of the intention.

What We Claim for the Recipient is:

1. A greeting comprising a merry Christmas.

2. A greeting including a happy new year.

3. A greeting comprising a merry Christmas and a substantially happy new year.

4. A greeting as claimed in claim 2 wherein said new year is also a prosperous one.

5. A greeting comprising a period of merriment during a season which includes the twenty-fifth day of the twelfth month calculated in accordance with the Gregorian calendar.

6. In a greeting, the compliments of the festive season.

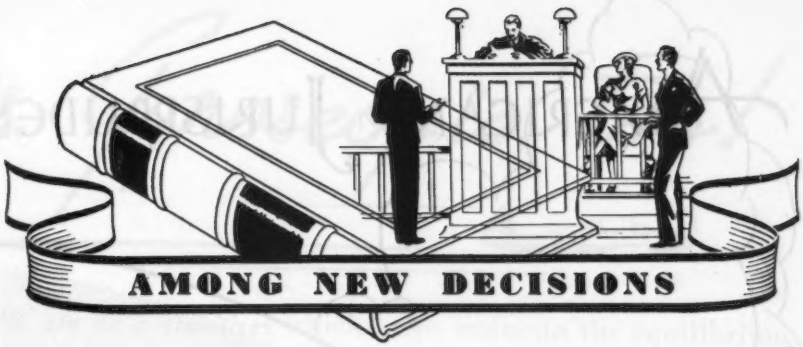
7. A Christmas having at least one of the group including Happiness, Merriment, Comfort, Health and Prosperity.

8. In a method of celebrating the festive season, those steps which comprise grasping a beaker containing a catalyst adapted to promote a whoopee reaction, elevating the elbow and exclaiming "down the hatch" or an equivalent phrase or word indicative of goodwill or what not.

Signed at Ottawa, this first day of December, 1938.

Santa K. Laus,
Inventor.

Bench and Bar, Dec. 1938.



AMONG NEW DECISIONS

Abatement and Revival — *libel actions.* In Jones v. Matson, 4 Wash (2d) 659, 104 P (2d) 591, 134 ALR 708, it was held that an action against one who was the principal stockholder of a corporation for damages caused by an alleged false statement, which prevented plaintiffs from obtaining the financial assistance necessary to enable them to exercise an option to purchase property of the corporation, is not one for a tort connected with contract within the rule that a cause of action for tort connected with a contract survives the death of the wrongdoer.

Annotation: Abatement or survival, upon death of party, of action, or cause of action, based on libel or slander. 134 ALR 717.

Alimony — *enforcement of foreign judgment.* In Johnson v. Johnson, 196 SC 474, 13 SE (2d) 593, 134 ALR 318, it was held that the refusal, because of the husband's changed financial condition, to enforce by commitment for contempt payment of the full amount due under an alimony decree of another state established as a local judgment does not deny full faith and credit to the decree where, under similar circumstances, the court would not enforce full payment under a domestic alimony decree.

Annotation: Change of conditions since decree for alimony rendered in another state as proper matter for consideration in enforcement of local decree based on the decree in the other state. 134 ALR 321.

Arbitration — *support of wife and child.* In Re Stern, 285 NY 239, 33 NE (2d) 689, 133 ALR 1332, it was held that an arbitration to determine the amounts which a husband separated from his wife should pay for the support of the wife and a minor child is not one the award in which may on motion be confirmed by the court and a judgment entered thereon under a statute authorizing such procedure where the submitted controversies "may be the subject of an action," and this although in a separation action the court has power to provide for support even though a judgment be not rendered.

Annotation: Dispute as to amount husband or father should pay for support of wife or child as subject of arbitration. 133 ALR 1334.

Assumpsit — *rentals after tax sale.* In King County v. Odman, — Wash (2d) —, 111 P (2d) 228, 133 ALR 1440, it was held that the former owner of property is liable to the county to which title had passed through tax foreclosure proceedings for rent which he has, in ignorance of the tax sale, thereafter collected from the tenant.

Annotation: Right of true owner to recover proceeds of sale or lease of real property made by another in

...is Gyroscopic, too!

In use as a stabilizer which helps maintain the equilibrium of the ship or airplane the gyroscope has contributed much to navigation.

The law is not always the way the lawyer would like to have it. The predetermination of a legal proposition without consulting with an open mind the existing rules of law may spell disaster.

AMERICAN JURISPRUDENCE with its unbiased statement of the rules of law supplies the necessary balance to judgment.

The task of the lawyer is to find out what the law really is, whether it is for or against his client. He must approach this problem with an open mind and guard against undue influence from his predetermined concepts.

AMERICAN JURISPRUDENCE offers these aids to balanced judgment—

- ***Easy-to-find well-stated rules, simple but powerful in their effect.***
- ***A statement of the reason for the rule, without which a full understanding would be impossible.***
- ***Well-illustrated exceptions which guard against improper applications.***
- ***Cautions as to limitations inherent in the rule itself.***

Write either publisher to furnish our new brochure describing this essential set.

Bancroft-Whitney Co.
SAN FRANCISCO, CALIFORNIA

the belief that he was the owner of the property. 133 ALR 1443.

Automobiles — *accelerating speed to prevent passing.* In Ironside v. Ironside, — Okla —, 108 P (2d) 157, 134 ALR 621, it was held that where driver of an automobile knew and saw that another driver, proceeding in the same direction, was in the act of passing around her, yet intentionally accelerated her speed to prevent him from passing, so that a collision with a third car approaching from the opposite direction occurred before the passing motorist could resume his place in line behind her, such facts were sufficient to sustain a verdict that she was negligent, regardless of negligence of the passing motorist, and that same was a concurrent cause of the accident.

Annotation: Accelerating speed to prevent car behind from passing. 134 ALR 627.

Bankruptcy — *agent's knowledge as imputed to creditor.* In Katz v. Kowalsky, 296 Mich 164, 295 NW 600, 134 ALR 179, it was held that the purpose of the notice or knowledge required by the provision of the Bankruptcy Act that a discharge in bankruptcy shall release a bankrupt from all of his provable debts except those not scheduled, unless the creditor to whom the unscheduled debt was owing had notice or actual knowledge of the proceedings in bankruptcy, is to provide a creditor an equal opportunity with other creditors to participate in the administration of the affairs of the estate and obtain any dividends to which he is entitled; and notice or actual knowledge which comes to someone who has clear authority to act for the creditor, and which provides ample opportunity to participate in the bankruptcy proceeding, satisfies the requirement of the law.

Annotation: Imputation of agent's knowledge to bankrupt or to creditor as satisfying conditions of provisions of Bankruptcy Act excepting unscheduled debts from discharge. 134 ALR 185.

Building and Loan Associations — *stockholder's right to inspect books.* In Wicks v. Puget Sound Savings & Loan Assoc., — Wash (2d) —, 113 P (2d) 70, 134 ALR 696, it was held that the common-law and statutory right of stockholders of a corporation to inspect the books and records of the corporation at reasonable times in order to inform themselves concerning the affairs of the company and the manner in which the officers are conducting corporate business will not be deemed to extend to shareholders in savings and loan associations, in view of the essential difference in the relation between such associations and their members and ordinary corporations and their stockholders, the fact that the statute governing such associations provides for an examination of their books and records by a public officer, and the fact that this statute, as submitted by the legislature to the governor, contained a provision expressly giving the shareholders such right, which was vetoed by the governor and was not passed over his veto.

Annotation: Right of member of savings and loan association to inspect books and records. 134 ALR 699.

Constitutional Law — *change in effectiveness of record notice.* In Evans v. Finley, — Or —, 111 P (2d) 833, 133 ALR 1318, it was held that a state statute providing that the effect of the recording of a chattel mortgage shall cease as to all persons upon the expiration of three years from the date of the maturity of the secured obligation unless the mortgagee files an affidavit of renewal is not, as applied to previously recorded mortgages, an unconstitutional impair-

ment of contract obligations, where the holders of such mortgages are given a reasonable time after the passage of the act to file the required affidavit of renewal.

Annotation: Validity and effect, as to previously recorded instrument, of statute which places or changes time limit on effectiveness of record of mortgages or other instruments. 133 ALR 1325.

Constitutional Law — *use of street for religious procession.* In Cox v. New Hampshire, — US —, 85 L ed (Adv 702), 61 S Ct 762, 133 ALR 1396, it was held that a statute requiring persons using the public streets for a parade or procession to procure a special license therefor from the local authorities does not constitute an unconstitutional interference with religious worship or the practice of religion, as applied to a group marching along a sidewalk in single file carrying signs and placards advertising their religious beliefs.

Annotation: Use of streets or parks for religious purposes. 133 ALR 1402.

Damages — *burden of proof in mitigating damages.* In Rich v. Daily Creamery Co., 296 Mich 270, 296 NW 253, 134 ALR 242, it was held that the burden is on defendant to show in mitigation of damages claimed that the plaintiff has not used every reasonable effort within his power to minimize his damages.

Annotation: Presumption and burden of proof regarding mitigation of damages. 134 ALR 242.

Depositions — *introduced by other party.* In Baker v. Metropolitan Life Ins. Co., 184 SC 341, 192 SE 571, 134 ALR 205, it was held that a party who introduces in evidence a deposition taken by the other party makes the deponent his own witness.

Annotation: Introduction of deposition by party other than the one at whose instance it was taken. 134 ALR 212.

Easement — *loss by nonuse of way of necessity.* In Finn v. Williams, 376 Ill 95, 33 NE (2d) 226, 133 ALR 1390, it was held that if at one time there has been unity of title between a tract of land bordering upon a highway and one having no direct access thereto, the right to a way by necessity may lie dormant through several transfers of title and yet pass with each transfer as appurtenant to the dominant estate and be exercised at any time by the holder of the title thereto.

Annotation: Failure or delay of original grantee to assert or exercise right of way by necessity as precluding subsequent assertion or exercise. 133 ALR 1393.

Electricity — *consumer's ownership of line as effecting liability.* In Oesterreich v. Claas, — Wis —, 295 NW 766, 134 ALR 499, it was held that when an electrical transmission line is neither built, owned nor controlled by a utility sought to be charged with damages arising out of its condition, such utility is neither bound to inspect the line nor obligated to respond in damages for injuries sustained by its defective construction or condition unless it supplies current actually knowing of these conditions and the current is the cause of the injury sued for, in which case it is the energizing of the line with knowledge of the conditions and not the conditions themselves which forms the basis of liability.

Annotation: Liability of electric light or power company for injury or damage due to condition of service lines or electrical appliance maintained by one to whom it furnishes electric current. 134 ALR 507.

Evidence — *impairment in handwriting in personal injury action.* In Morse v. Century Cab Co., — Iowa

—, 297 NW 877, 134 ALR 635, it was held that signatures of the plaintiff in a personal injury action to promissory notes executed during the year preceding that of injury and to a chattel mortgage executed about three years subsequent to his injury are admissible in evidence in such action as indicative of the impairment of his physical condition by the injury as against the objection that they are incompetent to prove matters sought to be proved thereby; that they tend to create a prejudice in plaintiff's favor, and that they are too remote in point of time.

Annotation: Changes in handwriting as evidence of change in physical or mental condition. 134 ALR 641.

Evidence — *intercepted telephone conversation.* In United States v. Polakoff, 112 F (2d) 888, 134 ALR 607, it was held that the consent of the party by whom a telephone call is originated, to a recording of the conversation, does not exclude the application of a statute (47 USC § 605) which provides that no person not being authorized by the sender shall intercept any communication by wire and divulge or publish its existence or contents.

Annotation: Admissibility of evidence obtained by government or other public officer by intercepting letter or telegraph or telephone message. 134 ALR 614.

Garnishment — *contingent liabilities.* In McKnight Co. v. Tomkinson, — Minn —, 296 NW 569, 134 ALR 850, it was held that when served with garnishment summons, funds belonging to defendant were being held by the garnishee as collateral for his obligations, and, since their future payment or delivery to defendant was entirely dependent upon the collectibility of certain other pledged collateral (a contingency), there was nothing of value belonging to defendant which plaintiff could reach by garnishment.

Annotation: What amounts to a contingency within statute or rule permitting garnishment or similar process before an obligation is due or payable, if payment or delivery is not dependent upon a contingency. 134 ALR 853.

Highways — *municipal liability for smooth surfaced material on sidewalk.* In City of Birmingham v. Monette, — Ala —, 1 So (2d) 1, 133 ALR 1020, it was held that a municipality is not negligent in using smooth surfaced material, or a construction with a slope suited to the situation, in building a sidewalk, unless a combination of those conditions creates a situation not reasonably safe for the use of people for whom it is designed, exercising ordinary care in that regard but that the negligence of a municipality in respect to a sidewalk on which a pedestrian slipped and fell is for the jury where there is evidence that the sidewalk was slick and sloping, that over a period of years persons had fallen there or had slipped without falling, and that it was constructed by the municipality, whose engineers were familiar with its condition during the period of its use.

Annotation: Liability for injury to pedestrian predicated upon slope or contour of sidewalk or crosswalk, or slippery nature of material of which it is constructed. 133 ALR 1026.

Highways — *vehicles injurious to.* In People v. Rapini, — Colo —, 112 P (2d) 551, 134 ALR 545, it was held that a grain binder, concededly an implement of husbandry, is a "vehicle" within the meaning of a statute prohibiting the movement on highways of vehicles with tires having protuberances of any material other than rubber projecting beyond the tread, where a statute defines the term "vehicle" as "every device . . . drawn

upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks," and defining an implement of husbandry as "every vehicle which is designed for agricultural purposes and exclusively used by the owner thereof in the conduct of his agricultural operations exclusive of transportation."

Annotation: Construction and application of statute or ordinance designed to prevent use of vehicles or equipment thereof injurious to the highway. 134 ALR 550.

Husband and Wife — *"reserve pay" as community property.* In French v. French, 17 Cal (2d) Adv p. 816, 112 P (2d) 235, 134 ALR 366, it was held that the "reserve pay" of a husband transferred from active service in the United States Navy to membership in the Naval Reserve is received for services presently rendered, and the right to receive it in future is, therefore, not community property subject to division on divorce. But pay received by a husband as a member of the Naval Reserve up to the time of the dissolution of the marriage by final decree of divorce is the property of the community and therefore subject to division upon divorce.

Annotation: Pensions, and reserve or retired pay, as community property. 134 ALR 368.

Insolvency — *valuation of securities in determining.* In Hutchinson v. Fidelity Investment Asso., 106 F (2d) 431, 133 ALR 1061, it was held that in determining the solvency of an investment trust for which the appointment of a receiver is sought, bonds and debentures held by it that are not in default are permissibly valued at par rather than at their market value, and mortgages, real estate, and secured notes are permissibly valued at book value until such time as an appraisal or offer for sale indicates the value to be less, as such securities are held not for sale on the market, but for long term investment and collection at maturity.

Annotation: Rule or formula for valuation of securities in determining question of insolvency or bankruptcy. 133 ALR 1068.

Insurance — *insurer's duty to defend.* In Commercial Casualty Ins. Co. v. Tri-State Transit Co., — Miss —, 1 So (2d) 221, 133 ALR 1510, it was held that death from pneumonia alleged to have been contracted in consequence of exposure incident to a bus passenger's being required to walk to her destination, when the bus broke down, allegedly in consequence of the owner's negligence, and no other means of conveyance were provided, is accidental within the provision of an automobile liability insurance policy obligating the insurer to defend any claim or suit, whether groundless or not, against the bus owner, provided such claim results from an accident or alleged accident covered by the policy.

Annotation: Refusal of automobile liability or indemnity insurer to assume defense of action against insured upon ground that claim upon which action is based is not within coverage of policy. 133 ALR 1516.

Interest — *receiver's sale of mortgaged property.* In Roos v. Fairy Silk Mills, — Pa —, 19 A (2d) 137, 134 ALR 844, it was held that in distributing between a senior and a junior mortgagee the proceeds of a sale of mortgaged property, clear of liens, in a receivership proceeding, the senior mortgagee is not entitled to interest subsequent to the date of payment of the final instalment of the purchase price, even though distribution was thereafter delayed by litigation instituted, in good faith, by the junior mortgagee, of the question whether

both mortgages covered the same property.

Annotation: Time when interest ceases to run upon obligation secured by lien transferred to proceeds of sale of the property free from liens in receivership, bankruptcy, or other proceedings. 134 ALR 846.

Intoxicating Liquors — *transportation through "dry" territory to "wet."* In Newton v. State, — Ala —, 200 So 428, 134 ALR 420, it was held that the provision of the Alabama Beverage Control Act that it shall not go into effect in a "dry" county, and that all laws prohibiting the manufacture and sale of alcoholic liquors shall remain in force in such county, does not preclude the transportation by qualified agents or agencies of a liquor or beverage duly authorized to be sold, and transported under the act in interstate commerce from without the state through a "dry" county within the state to a "wet" county within the state, or in intrastate commerce from a "wet" county within the state through a "dry" county or counties of the state, to another "wet" county therein.

Annotation: Transportation of liquor within state some counties or districts of which are "wet" and others "dry." 134 ALR 424.

Libel and Slander — *judicial proceedings.* In Johnston v. Schlarb, — Wash (2d) —, 110 P (2d) 190, 134 ALR 474, it was held that allegations in a mandamus action to compel a county to pay for services rendered by election officers amounts in excess of those which they had agreed to accept, brought by an assignee of such claims under a contract that in event of recovery, the assignor was to receive one fourth, the assignee one fourth for his trouble in collecting the assignments, and his counsel were to receive the remainder, that plaintiff and his counsel had entered into a conspiracy to cheat and defraud the county and had procured the assignments of the claims pursuant to such conspiracy, are, though fantastic, not so unrelated to the subject of the action as to be in excess of the privilege attaching to matter written or spoken in the course of judicial proceedings, where one of the counsel had been county attorney and as a member of the county board had voted for the arrangement by which election officers were required to accept a sum less than their statutory fees, and the other was his chief civil deputy.

Annotation: Relevancy of matter contained in pleading as affecting privilege within law of libel. 134 ALR 483.

Limitation of Actions — *fraudulent conveyances.* In Somers v. Spaulding, — Iowa —, 294 NW 610, 133 ALR 1300, it was held that a creditor claimed to have been defrauded by his debtor's conveyance is, in determining whether the right to attack it is barred by laches, deemed to have discovered the fraud at the time the conveyance was recorded.

Annotation: When statute of limitations or laches commences to run against action to set aside conveyance or transfer in fraud of creditors. 133 ALR 1311.

Military Service — *liability where vehicle operated in.* In Neu v. McCarthy, — Mass —, 33 NE (2d) 570, 133 ALR 1291, it was held that a state statute which provides that United States forces or troops, and any part of the militia parading or performing any duty according to law, shall have the right of way in any street or highway through which they may pass, merely confers a right as against civilian travelers and not a right to disregard traffic signals at intersections.

Annotation: Liability for injury or damages resulting from traffic accident on highway involving vehicle op-

erated in military service. 133 ALR 1298.

Mortgages — *mortgagor's acquirement of tax title.* In Griffin Lumber Co. v. Neill, — Ala —, 200 So 415, 134 ALR 286, it was held that a mortgagor in possession, or his successor in title and possession, cannot acquire by purchase at a sale for taxes which are his personal obligation a title superior to the mortgage lien.

Annotation: Right of mortgagor or purchaser of equity of redemption to defeat lien of mortgage by acquisition of title at sale subsequent to mortgage for nonpayment of taxes, or of assessment for local improvement. 134 ALR 289.

Municipal Corporations — *power to lease property.* In Daytona Beach v. Dygert, — Fla —, 1 So (2d) 170, 133 ALR 1237, it was held that if the power to lease a municipally owned airport to a private individual is not fully and clearly granted by legislative enactment, such power is deemed withheld.

Annotation: Power of municipal corporation to lease or sublet property owned or leased by it. 133 ALR 1241.

Pleading — *foreign law.* In Equitable Life Assurance Soc. v. Brandt, 240 Ala 260, 198 So 595, 134 ALR 555, it was held that where the law of another state on a certain subject is embraced in a statute, the language of the statute should be pleaded, but where the statute is only a part of such law, which is affected also by other facts of a legal nature existing in that state, the pleading should state what is the "law altogether," as shown by exposition, interpretation, and adjudication, and without regard to whether it is evidenced by books or writings.

Annotation: Manner and sufficiency of pleading foreign law. 134 ALR 570.

Pleading — *malpractice actions.* In Hill v. Boughton, — Fla —, 1 So (2d) 610, 134 ALR 678, it was held that no cause of action is stated in a malpractice action against a physician based upon an alleged erroneous diagnosis, by a complaint which does not allege the nature or identity of the malady from which plaintiff was suffering, the symptoms exhibited by the plaintiff, that the malady was such that it could have been recognized, identified, and diagnosed as such by a physician of ordinary skill and learning in the practice of his profession, or that the treatment administered by the defendant was not a proper treatment for the existing malady but resulted in damage to plaintiff.

Annotation: Necessary allegations in a declaration or complaint in action against physician or surgeon based on wrong diagnosis. 134 ALR 683.

Poor and Poor Laws — *liability for negligence of persons on relief.* In Chaffee v. Oxford, — Mass —, 33 NE (2d) 298, 134 ALR 756, it was held that a board of public welfare operating a town farm in connection with an infirmary for indigent persons and cutting wood from a wood lot for fuel therefor, does not, by making a profit on wood furnished to poor persons for whose maintenance other towns were responsible and by occasionally selling surplus products of the farm at a profit, thereby engage in a commercial enterprise so as to render it liable for the negligence of persons engaged in cutting wood in starting a fire which spread to adjoining property.

Annotation: Tort liability of municipality or other governmental subdivision in connection with poor relief activities. 134 ALR 762.

Principal and Surety — *surety's right to money owing.* In Town of River Junction v. Maryland Casualty

Co., 110 F (2d) 278, 134 ALR 727, it was held that the retained percentages under a construction contract providing for progress payments constitute an agreed security to be held by the owner for the protection of himself and the surety on the contractor's bond, and the contractor can give no one a right thereto superior to that of the surety. But the right of the surety on a building contractor's bond who, upon the contractor's default, has completed the work and who, under the terms of the contractor's application for the bond, was in the event of claim or default under the bond to be entitled to all payments due and to become due under the contract, to the amount of a progress payment due before but not paid at the time of the default, is not superior to that of a bank to whom the right to the payment had been assigned by the contractor prior to the default, to secure a loan, where the owner, on being notified of the assignment prior to the default, acquiesced in it and neither the owner nor the bank knew of the contractor's agreement with the surety,—especially where the proceeds of the loan were used to pay claims for which the surety would have been liable.

Annotation: Right of building contractor's surety who completes contract to money earned by contractor but unpaid before default. 134 ALR 738.

Public Employees — *right to vacation with pay.* In Nollett v. Hoffmann, — Minn —, 297 NW 164, 134 ALR 192, it was held that to allow plaintiff vacation with pay for any period prior to April 10, 1940, out of the state highway fund would be a pure gratuity, since all work rendered in that department prior thereto was under hiring by appellant at an hourly wage, fully paid, under no agreement or understanding that vacations could be taken with pay.

Annotation: Right of public officers or employees as regards vacations and holidays. 134 ALR 195.

Release — *return of consideration on rescission.* In Gilbert v. Rothschild, 280 NY 66, 19 NE (2d) 785, 134 ALR 1, it was held that an action at law to recover for personal injuries brought by one who has executed a general release of liability induced by fraudulent misrepresentations as to the extent of his injuries cannot be maintained without first rescinding the release by returning or tendering back the consideration received therefor.

Annotation: Return or tender of consideration for release or compromise as condition of action for rescission or cancelation, action upon original claim, or action for damages sustained by the fraud inducing the release or compromise. 134 ALR 6.

Sale — *limitation of seller's liability for representations.* In Bates v. Southgate, — Mass —, 31 NE (2d) 551, 133 ALR 1349, it was held that a "confirmation slip" delivered by the seller of stock in a corporation to the buyer stipulated that the seller made no representation, other than to identify the subject of the sale and state the price, does not preclude the buyer from rescinding the purchase on the ground that it was induced by the seller's misrepresentation as to the corporation's business.

Annotation: Provision in sale contract to effect that only conditions incorporated therein shall be binding. 133 ALR 1360.

Schools — *validity of self voted salary increase.* In Reckner v. School District, — Pa —, 19 A (2d) 402, 133 ALR 1254, it was held that a resolution increasing the salary of the secretary of a school board is ineffective where the secretary as a member of the board of directors cast the deciding vote in favor of its adoption.

Annotation: Member of governmental board voting on measure involving his personal interest. 133 ALR 1257.

Setoff — *bank deposit as against receiver.* In Geraghty v. National Bank of Commerce, — Wash (2d) —, 112 P (2d) 846, 134 ALR 531, it was held that a statute permitting a setoff of mutual debts or mutual credits between an insolvent corporation and a creditor operates to prevent payments made by a corporation on notes held by a bank by checks upon and charges against the corporation's deposit account, the bank being without knowledge or reasonable cause to believe that the corporation was insolvent, from constituting an unlawful and preferential payment recoverable by the corporation's receiver.

Annotation: Bank's right as against receiver to apply or set off deposit to credit of insolvent corporation against its indebtedness to bank. 134 ALR 536.

Statute of Frauds — *promise to be responsible for another's funeral.* In Smolka v. Chandler & Son, Inc., — Del —, 20 A (2d) 131, 134 ALR 629, it was held that a promise to be responsible for another's funeral expenses, even though made by one named as executor in the decedent's will, but not then qualified or known to the promisee to be such, is an original promise and not one to be answerable for another's debt required by the statute of frauds to be in writing.

Annotation: Statute of frauds as applicable to a contract to be responsible for another's funeral expenses. 134 ALR 633.

Venue — *what constitutes personal injury for purpose of.* In Coca-Cola Bottling Co. v. Kincannon, — Ark —, 150 SW (2d) 193, 134 ALR 747, it was held that a statute providing that all actions for damages for personal injury or death by wrongful act shall be brought in the county where the accident occurred which caused the injury or death, or in the county where the person injured or killed resided at the time of injury, is not limited to traumatic injuries, but covers wrongful acts from which personal injury results. Therefore an action for illness alleged to have resulted from the consumption of a beverage containing a deleterious substance is one for personal injury within a venue statute providing that all actions for damages for personal injury or death by wrongful act shall be brought in the county where the accident occurred which caused the injury or death, or in the county where the person injured or killed resided at the time of injury.

Annotation: What amounts to a personal injury within venue statute. 134 ALR 751.

Waters — *accretion or reliction.* In Frank v. Smith, 138 Neb 382, 293 NW 329, 134 ALR 458, it was held that the fact that accretion is due, in whole or in part, to obstructions placed in the river by third parties does not prevent the riparian owner from acquiring title thereto.

Annotation: Waters: rights in respect of changes by accretion or reliction due to artificial conditions. 134 ALR 467.

Wills — *death of life tenant before testator.* In Elliott v. Brintlinger, 376 Ill 147, 33 NE (2d) 199, 133 ALR 1364, it was held that where by reason of the death of the beneficiary of a trust for life in the lifetime of the testator the bequest in trust fails, a remainder limited thereon is accelerated.

Annotation: Death of life tenant before death of testator as causing lapse or "acceleration" of remainder. 133 ALR 1367.

THE HUMOROUS SIDE

The Chain of Progression. I had twelve bottles of whiskey in my cellar and my wife told me to empty the contents of each and every bottle down the sink "or else,"—so I said I would, and proceeded with the unpleasant task.

I withdrew the cork from the first bottle and poured the contents down the sink, with the exception of one glass which I drank. I extracted the cork from the second bottle and I did likewise, with the exception of one glass which I drank. Then I withdrew the cork from the third bottle and emptied the good old booze down the sink, except a sink which I drank. I pulled the cork from the fourth sink and poured the bottle down the glass, which I drank.

I pulled the bottle from the cork of the next and drank one sink out of it and threw the rest down the glass. I pulled the sink out of the next glass and poured the cork down the bottle. I pulled the next cork from my throat and poured the sink down the bottle and drank the glass, then I corked the sink with the glass, bottled the drink and drank the pour.

When I had everything emptied, I steadied the house with one hand and counted the bottles and corks and glasses with the other, which were twenty-nine. To be sure, I counted them again when they came by and I had seventy-four, and as the house came by I counted them again and finally I had all the houses and bottles and corks and glasses counted, except one house and one bottle which I drank.

Kentucky State Bar Association,
Frankfort, Kentucky.
(September, 1941)

Not Qualified. I believe the following incident which happened many years ago in Oswego New York Supreme Court may be a welcome item for Case and Comment. A case was being tried, an action against the life insurance company, for refusal to pay a death claim. The defense was the insured gave her age on application about ten years younger than the insurance company claimed her age to be. A witness was called on part of the defendant company. He had a farm, part of which faced a home of the insured decedent and he was a great lover of horses. The defendant's attorney proceeded with the question, you are James Hennessey? the reply, I am. You knew Mrs. Mahaney in her life time? yes, very well. Now tell us what you think her age was from observation and long acquaintance with her.

Then this reply, hold up young fellow, if you brought a horse to me to learn what I thought about its age I could pretty well tell you by looking at its teeth, but I'll be damned if I ever opened Mrs. Mahaney's mouth to look at her teeth.

Contributor: John Tiernan,
Oswego, New York.

Detail Information. A client handed this memo as part of the data for drawing his will:

Jane Doe Smith, born June 19, 1862.
Married John Henry Brown, Aug. 16, 1894.
John Henry Brown, died Nov. 7, 1909.
Married Richard Roe, March 27, 1939.
No children from any sources.

Contributor: William G. East,
Eugene, Ore.

The Missing E. There is the woman who sought a divorce from her husband because he went on a vacation without her, sending her a postal card, reading as follows:—"Having a wonderful time. Wish you were *her*."

Contributor: Maurice J. Kaman,
Rochester, N. Y.

A Hint to the Judge. A town character, who has been before me in Municipal Court fifty or more times, charged usually with intoxication, met me on the street recently and said he wanted to speak with me. "Judge," said he, "the police are persecuting me; they watch me all the time and arrest me every time I take a drink; they place me in solitary confinement and don't give me any jail privileges. They often let bunches of drunks go in the mornings but they always tell me I got to go to court and I don't like it.

"I know you sent me to jail many times,

but you've been good to me and suspended lots of sentences.

"I tell you, Judge, I've got so I've lost all faith in the police and now you're the only one I've got left to rely on!"

Contributor: C. W. Appleby,
Judge of Municipal Court of
Conneaut, Ohio.

Argument by Mouth and Ear. See Erkiletian vs. Devletian (Mich, 1941) 299 NW 821, which was "a claim for damages for loss of part of an ear as result of decedent's biting off a piece of his ear in argument."

Debtor Offers Free Lunch at Execution Sale. The following clippings are from a recent edition of a Virginia paper. The sale was called off so the public missed the free lunch.

SHERIFF'S SALE

Will sell at public auction on Aug. 16, 1941, at 10:30 A.M., on the premises of the Rockingham Marble Corporation, located near the northern corporate limits of Harrisonburg. All those lots of crushed stone and gravel consisting of approximately 350 tons, to satisfy an execution now in my hands for collection. Terms Cash. Berlin Bodkin, Dep. for Sam H. Callender, S. R. C.

ATTENTION, EVERYBODY

We invite everyone in Harrisonburg and Rockingham County to attend the sale as advertised. Barbequed beef and suckling pig will be served free along with the reason for this sale.

ROCKINGHAM MARBLE CORPORATION

Contributors: Conrad and Conrad,
Harrisonburg, Va.

Would Rather Not Be Sued. Recently a law firm wrote to Mr. A., advising him that their client was suing him, and asking him if he desired to accept service and waive the issuance of citation. His reply was as follows:

"Dear Gentlemen:

This is to advice you that I do not desire to become a defendant, due to the fact I do not understand the situation and would rather not." Signed, Mr. A.

Contributor: Murph Wilson,
Tyler, Tex.

When Justice Lost. Justice vs. Justice, 3 So. 2nd 508, the Complainants Bill for relief was denied. In other words "Justice was denied." Well what can you expect when Justice fights Justice.

Contributor: A. C. Simmons,
Fort Pierce, Fla.

When the Law Was Too Strict. This is an actual incident.

Old Negro Granny: Dis is my grandchild an she wants a marriage license.

Judge: How old is she?

Old Negro Granny: She jus past fifteen.

Judge: Sorry but she can't have a license; she is too young to get married.

Old Negro Granny: Lawdy mister jedge wat we gwyna do; shes ol nuf to do wat shes already done did.

Contributor: Richard P. Robbins,
County Judge.

Long but not Thick. In the Circuit Court of Wythe County, Va., a few years ago when Hon. Horace Sutherland was on the bench, the defendant was on the stand. It had not been established just how large the rock was that he was alleged to have slain his victim with, so the Judge interrupted the attorney and asked the following:

Judge:—"Was the rock as large as my fist?"

Defendant:—"Yas'er, Jedge, it was that big, and maybe a little bigger."

Judge:—"Was it as large as my two fists?" holding both fists up.

Defendant:—"Yas'er, Jedge, I 'spects it was a little bigger dan dat."

Judge:—"Was it as large as my head?"

Defendant:—"Jedge, it was as long, but I don't think it was as thick."

Contributor: Walter W. Edwards,
Hillsville, Va.

"You Can't Kill the Lawyers. The Circuit Court of a certain County in Illinois entered judgment by confession against certain defendants on a judgment note. The defendants, by their Attorneys, moved to re-open the case and have a hearing on the merits. Then the maker of the note died. Soon after, one of the defendants passed on. A year or so later the most important witness passed into the Great Beyond. Now the plaintiff has just died. There are four lawyers interested in the case. They are all going strong."

Contributor: Frank J. Wilkins,
Peoria, Ill.

Very Cross Examination. Mr. Silver. Now we are getting into the realm of fantasy; the witness says "it must have happened." The check for $3,000 was presented to the Bank of Hawaii for payment on April 4. If your honor pleases, this is all conjectural, this witness doesn't remember anything. We object to it.

The Court. Counsel has the right of cross-examination.

The Witness. You can cross-examine me, anyway.

Mr. Silver. You will be, don't worry.

GEARED

TO THE REQUIREMENTS OF MODERN PRACTICE A.L.R. SOLVES THE LAWYER'S LIBRARY PROBLEM

"Gentlemen," a law library expert was speaking to a law school library committee, "if you acquire 48,000 volumes of reports and digests, 16,000 volumes of statutes, another 16,000 volumes of treatises, 10,000 volumes of periodicals and 10,000 miscellaneous volumes, you will have a pretty fair library." "Of course," he added, "you would be a long way from the 564,000 volumes at Cambridge, but you could get along all right."

No modern lawyer needs such an elaborate office library. It would take a staff of librarians to keep it in order and require almost a block of space. ¶ The modern lawyer deals with modern problems and therefore, the over thirteen thousand annotations in American Law Reports, each containing a discussion of all the cases which have been decided on the question, are on practical modern questions. ¶ In this manner A.L.R. solves the problem of a workable library, economical as to space and cost.

The Lawyers Co-op. Publishing Co.
ROCHESTER, N. Y.
New York City Office, 30 Broad Street

A.L.R.

Bancroft-Whitney Company
200 McAllister Street
SAN FRANCISCO, CALIF.

Mr. Heen. Don't you be afraid of him either, Mr. Wo; he is making a lot of noise.

Mr. Silver. Counsel has been making the noise so far.

Mr. Heen. Now counsel is starting.

The Court. Let us proceed, gentlemen.

Contributor: Leslie C. Finley,
Courthouse, Casper, Wyo.

An Awful Crime. At the Spring Term in 1822 of the Court of Common Pleas of Belmont County, Ohio, one John Winters was indicted by the Grand Jury for the commission of the following *awful crime* and in the following language:

"John Winters, merchant, late of the Town of St. Clairsville in said County, with force and arms unlawfully did import and bring into the Town of St. Clairsville aforesaid one pack of playing cards contrary to the statute, etc."

He was further indicted in the following language:

"The said John Winters with like force and arms at the Town of St. Clairsville aforesaid unlawfully did keep and retain in his possession one pack of playing cards to the evil example of all others in like cases offending, contrary to the statute, etc."

Witnesses: Jacob McElroy and Johnson Timberlake (likely great grandfather of the undersigned).

Quere: Was Granddaddy caught in a poker game?

Contributor: C. E. Timberlake,
Bellaire, Ohio.

Can Cantaloupes Comply? Our contributor writes: "Looking over the Session Laws at Chapter 189 today, I discovered something which may be of interest to you (not that you are a cantaloupe or a potato). Cantaloupes and Potatoes must obey the law in the State of Washington.

"Be it enacted by the Legislature of the State of Washington:

Section 1. It shall be the duty of every Horticultural Inspector to inspect potatoes or cantaloupes before the same are shipped and if he shall find that the same *comply* with the *laws* of the State of Washington and the *rules* and *regulations* of the Department of Agriculture promulgated thereunder, to issue to the person in charge thereof a certificate of inspection or permit to ship said potatoes or cantaloupes, etc."

As I understand English, I take it that the phrase "comply with" means there must be some activity on the part of the one complying, and that therefore the potatoes and cantaloupes must become familiar with the laws and regulations before they may be shipped.

The above might be of interest also to attorneys who may have cantaloupes and potatoes on their list of clients."

Contributor: John E. Gallagher,
Tacoma, Wash.

The Reply Courteous. The following letter addressed "District Attorney" was delivered to the U. S. Commissioner, Petersburg, Alaska.

"Stockton Calif April 27 1939

Dear sir

is Mrs ——— wanted on iny charge in Alaska if so can she be deported she is making a pest out of herself she is fooling around with her own cousins to much I would like to get her out of here so please write & let me know at ounce from

———————

Stockton Calif."

"Petersburg, Alaska, May 2, 1939.

———————,

——————— St.,

Stockton, Calif.

Dear Miss or Madam:—

Your inquiry as to whether Mrs. ———, formerly of this place, is wanted in Alaska, has come to me for answer. In reply to same will state that I have no reason to believe that she is.

Yours truly,

———————

U. S. Commissioner."

Contributor: Harold F. Dawes,
U. S. Commr., Petersburg, Alaska.

Headline. For your "The Humorous Side" writes our contributor. "I submit a headline in last week's Montgomery newspaper, concerning the local Bar Association forming a committee to give free advice to poor people unable to employ attorneys:

"Local Bar to Give Poor Free Advice."

Contributor: John F. Britton.

The Intervenor. In the District Court record in a divorce case in this county we find the following entry and no other in the case. The entry was made by the Judge as follows:

"God Almighty interfered and relieved the defendant from further tribulations on earth by death."

Contributor: W. E. Hogueland,
Yates Center, Kans.

Divorces Granted. Salt Lake County, Utah. William Letsie Higgins from George Rodney Higgins, cruelty. Plaintiff awarded custody of child, $5 a month support money.

Contributor: Geo. A. Faust,
Salt Lake City, Utah.

Howdy, Your Honor. Baton Rouge, La. Oct. 10—(AP)—Witnesses in a divorce case spoke so softly in the court room that Dist.

Judge Charles A. Holcombe asked an attorney to admonish them. "Speak to the judge, please," counsel told the next witness, who smiled brightly at the bench and said, "Hello, Judge."

Contributor: O. J. Hamilton,
Abilene, Texas.

Burden of Proof. Some years ago, I was defending a client, before a right nice, old, retired railroad man then serving as Justice of the Peace. The "Judge" was really a splendid old fellow, but he had too good an opinion of my worthy opposing lawyer. That is, they were extremely friendly, and my friend for the opposition could always get anything he asked for before the "Judge." Of course, the whole Bar, including myself, knew of the situation, but I waived a change of venue because I had a good defense,—so I thought—anyhow my client was in such dire financial difficulties that bankruptcy was inevitable no matter what the outcome of the suit. So, we went to trial, and my client lost, despite the air tight defense. As long as the old Judge lived, I goodnaturedly railed at Lee's influence over the court, but it was only the other day I learned the sequel. Lee finally broke down and told me that the Judge, at the conclusion of my evidence, called Lee aside and whispered, "Lee, I'm going to hold with 'us' all right, but, Lee," he complained, "I—I wish you'd give 'us' a little better evidence next time."

Contributor: C. Clyde Myers,
Kansas City, Kansas.

Yas suh! Teacher: "Rastus, what animal is most noted for its fur?"

Rastus: "De skunk; de more fur you gets away frum him de better it is fur you."

Understandable. How our tastes change. Little girls like painted dolls; little boys like soldiers. When they grow up the girls like the soldiers and the boys go for the painted dolls. —Canadian Woodworker.

'Oot! 'Oot! An Englishman heard an owl hoot for the first time. "What was that?" he asked.

"An owl," was the reply.

"My deah fellah, I know that, but what was 'owling?"

The Masher. She gazed pensively at the rural scene: "Why are you running that steam roller thing over that field?" she asked.

"I'm raising mashed potatoes this year," replied the farmer.

History Repeats. Historians say that women used cosmetics in the Middle Ages. For that matter women in the middle ages still do.

But Kin You? The college boy describes his parents as "The kin you love to touch."

Lord Babbington was instructing a new colored servant in his duties, adding, "Now, Zeke, when I ring for you, you must answer me by saying, 'My lord, what will you have?'"

A few hours later, having occasion to summon the servant, his lordship was astonished with the following: "My Gawd, what does you want now?"

Modern Parody. Breathes there a man with soul so dead
Who never turned around and said,
"Not bad." —Chats.

We Know. Copywriters may also do other things, but whoever writes the copy for bank advertisements isn't the guy who makes the loans. —Chats.

Old But True. If, as the Senator said, "There is a beautiful tie between a father and son," the son is wearing it.
—Chats.

One Way of Doing It. There is the young lad who said if he went to war he would join the Navy and try to get on a sister ship. The others always seem to get sunk.
—Chats.

Truth Stranger Than Fiction. It appeared in a newspaper not long ago that a woman was granted a divorce on the grounds that her husband had spoken to her only twice since they were married. She was also given the custody of their three children.
—Chats.

Or Is That Just A Gag. There is the Scotchman who gave his girl a lipstick for Christmas so he could get it back.
—Chats.

Out of Sight. The millennium will never be reached until you don't have to shave, get a haircut, go to the dentist, or stop for gasoline. —Chats.

Progress for You. The tolerance of democracy is proven every day. We have just read an announcement by a radio crooner that he was at liberty. —Chats.

Which Side? George Biddle Hoofstraw, a large, earnest black boy, having been duly registered, was asked by the large, earnest white lady on the draft board whether he had any questions. "Yessum," said Mr. Hoofstraw. "Which side is I on?"
—Cosgrove's Magazine.

So He's Melancholy. Speaker: "Do you know that the time is coming when women will receive men's wages?"

Melancholy Voice from Rear of House: "Yes, Saturday night."

—Exchange.

Wiser. He: "Let's sit this one out; no one will be the wiser."

She: "Oh yes, you will."

—Exchange.

A Small Point. His Wife: "So your client was acquitted of murder. On what grounds?"

Lawyer: "Insanity. We proved that his father had spent five years in an asylum."

His Wife: "But he didn't, did he?"

Lawyer: "Yes. He was a doctor there, but we had not time to bring that fact out!"

—Cosgrove's Magazine.

Unbeliever. Medium: "Madam, the spirit of your husband wishes to speak to you."

Madam: "It can't be! Henry never had any spirit." —The Safer Way.

Ready Alibi. Teacher: "This essay on 'Our Car' is exactly, word for word, the same as your brother's."

Jimmie: "Yes, Miss; it's the same car."

No Word for It. "I'll bet you were mad when you ran over that skunk."

"Mad? I was highly incensed."

Experience Teaches. First Cannibal: "The Chief has hay fever."

Second Cannibal: "Serves him right. I told him not to eat that grass widow."

Cinema v. Sunday School. Sunday School Teacher: "Who went into the lion's den and came out unharmed?"

Willie: "Tarzan!"

Sad State of Affairs. "Do you know your wife is telling it around that you can't keep her in clothes?"

"That's nothing. I bought her a home and I can't keep her in that either."

—Exchange.

So That's It. He: "There goes a fellow who seems to take the worst possible view of everything."

She: "A pessimist, is he?"

He: "No, he's a candid camera fiend."

Among Those Learning. "Give a sentence using the word *bewitches*."

"Go ahead, I'll bewitches in a minute."

From the Mouths of Little Ones.—Pastor: "Good-morning, May. I hear God has seen fit to send you two little twin brothers."

Little May: "Yes, sir, and He knows where the money's coming from, too. Daddy said so."

Matter of Opinion. What a difference a comma does make!

Woman is pretty, generally speaking.

Woman is pretty generally speaking.

Your Guess.—Teacher: "Donald, give me a sentence containing *flippancy*."

Donald: "Let's flip 'n' see whether I pass or flunk."

Envied Critter. A city man asked a mountaineer who was shaving:

"How many times have you cut yourself?"

The reply was: "Wal, I've been shaving nigh on to two years now and I haven't cut myself either time." —Exchange.

Quiz Kid. Pa: "Well, son, how are your marks?"

Son: "They're under water."

Pa: "What do you mean under water?"

Son: "Below 'C' level."

That Puts It Neatly. "There's a man outside to see you about collecting a bill."

"What does he look like?"

"He looks like you better pay it."

A Bit of Word Play. Customer: "I want some consolated rye."

Druggist: "You mean concentrated lye?"

Customer: "It does nutmeg any difference. That's what I camphor. What does it sulphur?"

Druggist: "Fifteen cents. I have never cinnamon with so much wit."

Same Principle. Chappell (visiting new dentist for first time)—"Have you been a dentist very long, Doc?"

The Dentist—"No, I was a riveter till I got too nervous to work up high."

You Don't Have to Be Psychic. "To sell goods, you must be a psychologist; you must be psychic. Now I am psychic. I can read the minds of men I call on. For instance, I know what's on your mind right now."

"Well, then, why don't you go there?"

Hasty Conclusion. "Madam, are you positive you know where your husband was the night the crime was committed?"

"Well, all I can say is that if I didn't know, then I busted a good rollin'-pin over the head of an innocent man."

WHY WE ADVERTISE THIS

A•L•R• WORD INDEX

After over 90% of the A.L.R. owners acquired this new one-half million word leads to A.L.R. annotations we were about to discontinue advertising it. But to our surprise the sale for this word index was just beginning.

Non-A.L.R. Owners find this a most helpful desk book, which tells them the annotations they should consult on their current questions.

Let this red desk book be your next library purchase.

THE LAWYERS CO-OPERATIVE PUBLISHING CO., ROCHESTER, N. Y.

BANCROFT-WHITNEY CO., SAN FRANCISCO, CALIF.

Seriously? Sophomore: "Were you ever bothered with athlete's foot?"

Freshman: "Yes, once when the captain of the football team caught me with his girl."

You Said It. "What's harder than buying a present for a girl who has everything?"

"Buying one for a girl who *wants* everything."

Verification Waived. Among some old papers in an Arkansas probate court was found a doctor's account for medical attendance during the last illness of the deceased. On the back the administrator had made the following indorsement: "This claim is not verified by affidavit as the statutes require, but the death of the deceased is satisfactory evidence to my mind that the doctor did the work."
—Cosgrove's Magazine.

Too Long. "I shall have to study three years to be admitted to the bar," said the young man with the large spectacles.

"Tain't worth it," commented Uncle Bill Bottletop after some thought. "I'd rather go without the drink."
—Washington Star.

Never Again. First Maid: "How did you like working for that college professor?"

Second Maid: "Aw, it was a rotten job. He was all the time quarreling with his wife, and they kept me busy running between the keyhole and the dictionary."
—Exchange.

Not So Dumb. "Humph? You're not a good driver. You knocked down a lamppost."

"Oh, but I am a good driver. I just wanted a dark place to park."

Explicit Yet Subtle. A colored man servitor was supposed to be on the job at 7 in the morning. It was nearly 9 o'clock now and the boss was stomping around and showing every sign of rage, when the phone rang. It was the colored one.

"Boss!" he said in his most ingratiating tones. "I'm sorry, but I caint come to wu'k this moaning'. Hits on account of de heavy fog. De fact is, I ain't even arrived home las night yit."
—Exchange.

Biblical Wit or What. Goliath: "Why don't you stand up here and fight me?"

David: "Don't hurry me, big boy; wait till I get a little boulder."
—Exchange.

Things We Would Like to Know. How women can talk so much about such little things—things that don't matter, anyhow.

How zipper fasteners work. One would think the traveling doodad pulled a wire through a series of loops, but it dinna.

Why it is taboo to break crackers into your soup but O. K. to throw in the wee bit round ones.

How many of the boys and girls really read "Gone With the Wind." We know a lot of them bought it, but how many really read it?

Who invented the envelope type of paper cup. We'd like to shoot him at sunrise—any sunrise. Add paper towels and paper napkins.

Why the chap who knows the least about a subject talks the most about it.
—Cosgrove's Magazine.

"Don't ask me whether the grand jury returned an indictment—I didn't even know they had borrowed one."

Ah, Yes. "Your wife is a talented artist," said Petoskey upon being shown a painting by the lady.

"Painting is just her hobby," said the husband. "You see, we have five children."

"Ah, yes," said Petoskey. "I see. She has five children but painting is her hobby."
—Cosgrove's Magazine.

Rated a Break. Old Ben Duster of the Panhandle country had come at last to the end of his days. Five or six of his cronies were at the bedside helping him die.

"Well, boys," said Old Ben just before he pushed off, "I'm a-goin' quick now."

"One of the boys, aged about eighty-five, asked: "Where you a-goin', Ben?"

Ben gave them his future address: "Hell, I reckon. After ninety-two years o' livin' in this world I figure I deserve a break."
—Cosgrove's Magazine.